

Members

Rep. Robert Kuzman, Chairperson
Rep. Dale Sturtz
Rep. Ralph Ayres
Rep. Kathy Richardson
Sen. Richard Bray
Sen. David Ford
Sen. William Alexa
Sen. Timothy Lanane
Justice Randall T. Shepard
Timothy Curley
Ernest Yelton
David Lewis
Sarah Taylor



COMMISSION ON COURTS

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Mark Goodpaster, Fiscal Analyst for the
Commission
Andrew Roesener, Attorney for the Commission

Authority: IC 33-1-15

MEETING MINUTES¹

Meeting Date: October 30, 2001
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Robert Kuzman, Chairperson; Rep. Dale Sturtz; Rep. Kathy Richardson; Sen. Timothy Lanane; Justice Randall T. Shepard; Timothy Curley; Ernest Yelton; David Lewis; Sarah Taylor.

Members Absent: Rep. Ralph Ayres; Sen. David Ford; Sen. Richard Bray; Sen. William Alexa.

Chairman Kuzman convened the meeting at 1:10 p.m. As first order of business, the Commission approved the minutes of the previous meeting held on October 3.

As the next item on the agenda, the Commission reviewed the need for new courts and court officers.

Vigo County

Judge Michael Eldred, Vigo Superior Court 1, told the Commission members that while the county's workload has increased, no additional courts have been created in Vigo County in 25 years. He referred to the weighted caseload study that indicated that Vigo County needs 9.4 judges, but only has six. (See Exhibit A)

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

He told the Commission members that felony jury trials are set seven deep every Monday of every week. If a speedy trial is not requested, the earliest that a trial can be scheduled is the first week of April 2002.

He also told the Commission that civil jury trials are set three deep and that the earliest date that a civil trial can be scheduled is in late 2004.

Judge Eldred told the Commission members that the judges are not personally concerned about being overworked. They are more concerned about the citizens in Vigo County not being able to have proper access to the courts. He also indicated that the courts have used caseload management techniques such as mediation and reassignment of cases among the courts in the county. However, the caseload is still high and the need exists for a new court.

Commission members Tim Curley and Judge Yelton affirmed Vigo County's need for an additional court.

The Commission recommended introduction of a bill to create an additional superior court in Vigo County by a vote of 9 to 0.

Dearborn County

Judges James Humphrey and Michael Witte and Richard Butler, president of Dearborn County Bar Association, all appeared before the Commission on Courts to describe the need for a new court in Dearborn County.

Mr. Butler described the factors that have increased the demand for court services in Dearborn County. First, Dearborn County is one of the last undeveloped areas in the Greater Cincinnati Area. With completion of Interstate 275, new development is occurring at a rapid rate. Secondly, new casinos in the area have also contributed to the overall growth in the area, also increasing the need for court services.

He said that the last time that a new court was established was in 1976.

He also indicated that the weighted caseload study demonstrates the need for a new court. (See Exhibit A).

The Commission recommended introduction of a bill to create an additional superior court in Dearborn County by a vote of 9 to 0.

Madison County

Judge Dennis Carroll testified that Madison County needs a new magistrate. He explained that the workload measures include both county- and state-paid court officers when determining each county's existing capacity. In Madison County, six of the court commissioners are paid by the county at an annual cost of \$250,000.

He indicated that if these court commissioners were excluded from the workload mix, the utilization rate would increase Madison County to a level between Dekalb and Howard Counties. (See Exhibit A).

Judge Carroll indicated that physical space and support staff already exist in the court system. Consequently, the creation of a magistrate position will have no hidden costs for the county.

Chief Justice Shepard compared the basis for recommending a magistrate in the case of

Madison County with the demonstrated needs in Vigo and Dearborn Counties for new courts. He indicated that while Madison County does not have a workload problem, it demonstrates a basic inequity in how state-paid judicial positions are granted to different counties. Madison County is like Marion County to the extent that it finances more of its judicial staff than other counties. He suggested that all of other things being equal, the policy of the Commission on Courts should be for the state and not the county to pay for additional court officers when they are justified by caseload statistics.

The Commission recommended by a 9 - 0 vote to create a magistrate position for Madison County.

Pike County:

Pike Circuit Court Judge Lee Baker and Small Claims Referee Mike Chesnut both appeared before the Commission to discuss the need for converting a small claims referee to a magistrate position. Currently, the referee is paid \$54,000 by the state and receives a supplement by Pike County. He told the Commission members that the caseload of Pike County has increased significantly due to a large number of arrests and prosecutions for methamphetamine violations. In addition, Pike County is a small county with a limited tax base.

Judge Baker told the Commission that the additional costs to the state would be \$18,000 when considering the difference between the salary of a magistrate (\$72,000) and the current state portion of the salary of the referee. He also indicated that this change in title from referee to magistrate will not increase judicial personnel.

The Commission recommended by a 9 - 0 vote to create a magistrate position for Madison County.

Tax Court

John Laramore, chairman of the State Board of Tax Commissioners, testified to the Commission concerning the right to appeal decisions made by the State Tax Court.

Chairman Kuzman suggested that Mr. Laramore discuss this issue again at a later date.

Judicial Salaries

Judge Paul Mathias told the Commission members about the need to consider an increase in salaries of judicial officers. He indicated that the salaries of judges were last increased in 1997. He suggested that the increases should be in line with the increases in the following schedule:

<u>Court</u>	<u>Proposed Salary</u>
Circuit, Superior, Municipal, County, and Probate Courts	\$ 105,000
Judge of the Court of Appeals	\$ 125,000
Justice of the Supreme Court	\$130,000

He told the Commission that depending on the county, about two-thirds of all trial court judges receive \$95,000 per year and 25% receive \$90,000 per year. The remainder receives a salary between \$90,000 and \$95,000. Indiana currently ranks 38th of all states in level of salary for judges at an annual salary of \$95,000 and 43rd of all states for judges receiving \$90,000. The average of the surrounding states is over \$120,000. He suggested that the local supplement be retained. However, if the supplement is discontinued, then all levels should be increased by

\$5,000. The increase should be funded by an increase in court fees.

Judge Mathias also asked for the Commission to recommend the establishment of a Compensation Commission.

Right to Pauper Counsel in Civil Litigation

During the review of the final report, the Commission members discussed the issue of whether IC 34-10-1 should be repealed or modified.

The argument supporting the repeal of this section of the Indiana Code is that the Indiana Code already has several sections of the code which either allow or require the court to appoint an attorney for indigent litigants in civil cases. In addition, offenders in DOC facilities filing frivolous lawsuits are currently having cases upheld at the appeals level because of this section of the code.

The argument supporting the modification of this section of the code is that a judge should be designated as a gatekeeper for whether an attorney should be appointed to represent an indigent litigant. And while current law permits or requires the appointment of pauper attorneys in a large number of civil matters, exceptions are likely to continue to occur where an indigent person may need legal assistance. In addition, it was felt that it was important for the legislature to state specifically in statute what factors the courts should consider when deciding whether or not a pauper attorney should be appointed.

The Commission voted 8 to 0 to recommend a bill that would specify that a court may assign an attorney if a person is impoverished according to the Federal Poverty Guidelines.

However, this presumption is rebutted if the court finds that the person:

- has financial resources available to employ private counsel without imposing a financial hardship on the person or the person's family;
- is voluntarily unemployed or under employed;
- is owed money or other assets in an amount sufficient to employ private counsel;
- is impoverished due to incarceration; or
- is unlikely to prevail on the person's claim or defense.

Civil Protective Orders

The Commission approved the findings set forth in the draft of the final report. The members voted 8 to 1 to approve the work currently being completed by the Protective Order Study Committee of the Judicial Conference of Indiana.

The Need for Additional Fees in Selected Civil Cases

The Commission approved the findings set forth in the draft of the final report.

Concerning recommendations, the Commission felt that the Governor's current proposal could address this need for additional revenues and likely necessitate various changes in court administration which would customarily fall within this Commission's purview. The Commission has not had time to examine the proposal and anticipates that legislative committees may need to act during the 2002 session without these changes having been reviewed by the Commission on Courts.

Staggering of Terms of Office in Porter County

The Commission approved deleting the section of the report recommending the staggering of terms of office in Porter County.

Approval of Final Report:

The Commission voted unanimously to approve the final report.

The meeting was adjourned.

**Weighted Caseload Study: Counties by Number of Courts
Ranked By Utilization Rates, CY 2000**

	2000			1999			1998		
County	Need	Have	Utlz. Rate	Need	Have	Utlz. Rate	Need	Have	Utlz. Rate
* Dearborn	4.03	1.5	2.68	3.06	1.5	2.04	2.86	1.5	1.9
Jefferson	3.08	1.5	2.05	2.46	1.5	1.64	2.58	2	1.29
* Howard	8.07	4.35	1.85	7.99	4.5	1.78	7.88	4.35	1.81
Jackson	3.8	2.1	1.81	3.52	2.5	1.41	3.71	2.05	1.81
Clark	9.01	5	1.8	8.09	5	1.62	8.47	5	1.69
Tippecanoe	11.86	7	1.69	11.09	7	1.58	11.38	8	1.42
* La Porte	11.64	7	1.66	10.58	7	1.51	10.28	7.5	1.37
* Dekalb	3.65	2.25	1.62	3.25	2.25	1.44	3.14	2.25	1.4
Spencer	1.59	1	1.59	1.47	1	1.47	1.26	1	1.26
* Vigo	9.4	6	1.57	7.71	6	1.29	7.95	6	1.33
Dubois	3.14	2	1.57	2.76	2	1.38	2.49	2	1.24
Perry	1.56	1	1.56	1.36	1	1.36	1.37	1	1.37
Huntington	3.08	2	1.54	2.8	2	1.4	2.87	2	1.44
Floyd	6.11	4	1.53	6	4	1.5	7.29	4	1.82
Elkhart	13.77	8.98	1.53	13.94	8.98	1.55	14.06	9	1.56
Kosciusko	5.95	4	1.49	5.21	4	1.3	5.44	4	1.36
Hendricks	5.81	4	1.45	5.12	4	1.28	5.28	4	1.32
Putnam	2.88	2	1.44	2.69	2	1.35	2.67	2	1.33
St. Joseph	22.88	16	1.43	21.97	16	1.37	22.78	16	1.42
Clinton	2.86	2	1.43	2.68	2	1.34	2.68	2	1.34
Marion	82.24	58.09	1.42	83.12	56.95	1.46	82.06	60.86	1.35
Wabash	2.84	2	1.42	2.85	2.1	1.36	2.78	2.1	1.32
Monroe	9.97	7	1.42	9.59	7	1.37	9.06	7	1.29
Bartholomew	6.01	4.25	1.41	5.86	4.25	1.38	5.86	4.25	1.38
Franklin	1.41	1	1.41	1.11	1	1.11	1.03	1	1.03
Shelby	4.23	3	1.41	3.82	3	1.27	3.69	3	1.23
Allen	30.5	22	1.39	30.45	22	1.38	30.91	22	1.4
Miami	2.78	2	1.39	2.55	2	1.27	2.7	2	1.35
Harrison	2.77	2	1.39	2.68	2	1.34	2.58	2	1.29
Marshall	4.12	3	1.37	3.92	3	1.31	3.62	3	1.21
Vanderburgh	18.68	14	1.33	18.84	14	1.35	14.5	12	1.21
Scott	2.63	2	1.32	2.44	2	1.22	2.4	2	1.2
Noble	3.97	3	1.32	3.8	3	1.27	3.68	3	1.23
Knox	3.93	3	1.31	3.26	3	1.09	3.3	3	1.1
Parke	1.29	1	1.29	1.52	1	1.52	1.05	1	1.05
Porter	11.41	9	1.27	10.74	9	1.19	10.36	9	1.15
White	2.5	2	1.25	2.1	2	1.05	2.01	2	1.01
Wayne	5.63	4.5	1.25	5.61	4.5	1.25	5.68	4.5	1.26
Hancock	3.76	3	1.25	3.69	3	1.23	3.02	3	1.01
Hamilton	10.25	8.3	1.24	8.98	7.9	1.14	9.01	8.1	1.11
* Madison	10.5	8.6	1.22	10.23	8.1	1.26	10.1	7.7	1.31
Whitley	2.41	2	1.21	2.46	2	1.23	2.23	2	1.12
Fayette	2.39	2	1.2	2.3	2	1.15	2.26	2	1.13
Warrick	3.57	3	1.19	3.11	3	1.04	3.2	3	1.07
Lagrange	2.36	2	1.18	2.08	2	1.04	1.9	2	0.95
Montgomery	3.5	3	1.17	2.83	3	0.94	2.79	3	0.93
Jennings	2.34	2	1.17	2.15	2	1.08	2.31	2	1.16
Johnson	6.99	6	1.16	7.03	6	1.17	6.99	6	1.17
Crawford	1.16	1	1.16	1.11	1	1.11	0.89	1	0.89
Gibson	2.3	2	1.15	2.38	2	1.19	2.22	2	1.11
Greene	2.28	2	1.14	2.23	2	1.12	2.11	2	1.05
Clay	2.24	2	1.12	2	2	1	2.2	2	1.1
Vermillion	1.12	1	1.12	0.93	1	0.93	0.97	1	0.97

	2000			1999			1998		
Washington	2.23	2	1.11	2.19	2	1.1	2.17	2	1.09
Lake	36.56	33.15	1.1	35.65	29.7	1.2	36.7	34.85	1.05
Decatur	2.13	2	1.06	1.88	2	0.94	1.96	2	0.98
Cass	3.17	3	1.06	2.92	3.1	0.94	3.26	3.1	1.05
Orange	2.09	2	1.05	1.86	2	0.93	1.88	2	0.94
Boone	3.32	3.2	1.04	3.09	3.2	0.97	3.07	3.2	0.96
Fountain	1.29	1.25	1.03	1.14	1.25	0.91	1.18	1.25	0.94
Lawrence	3.67	3.6	1.02	3.44	3.75	0.92	3.51	3.75	0.94
Owen	1.52	1.5	1.01	1.5	1.5	1	1.5	1.5	1
* Henry	3.74	3.7	1.01	3.63	3.7	0.98	3.51	3.7	0.95
Steuben	2.95	3	0.98	2.74	3	0.91	2.64	3	0.88
Martin	0.97	1	0.97	0.79	1	0.79	0.79	1	0.79
Grant	5.25	5.5	0.95	5.58	5.5	1.01	5.5	5	1.1
Randolph	1.89	2	0.95	1.75	2	0.87	1.61	2	0.8
Daviess	1.89	2	0.94	1.88	3	0.63	1.8	2	0.9
Adams	1.86	2	0.93	1.67	2	0.84	1.73	2	0.87
Benton	0.92	1	0.92	0.79	1	0.79	0.62	1	0.62
Fulton	1.81	2	0.91	1.81	2	0.9	1.71	2	0.85
Ripley	1.81	2	0.9	1.75	2	0.88	1.64	2	0.82
Starke	1.78	2	0.89	1.64	2	0.82	1.85	2	0.93
Posey	1.75	2	0.88	1.49	2	0.75	1.51	2	0.75
Delaware	7.51	8.9	0.84	7.56	8.9	0.85	8.07	10.3	0.78
Wells	1.69	2	0.84	1.53	2	0.76	1.6	2	0.8
Morgan	4.08	5	0.82	3.83	5	0.77	3.92	5	0.78
Union	0.77	1	0.77	0.63	1	0.63	0.63	1	0.63
Pulaski	1.48	2	0.74	1.4	2	0.7	1.4	2	0.7
* Pike	1.1	1.5	0.74	1.05	1.5	0.7	1.48	1.5	0.98
Ohio	0.73	1	0.73	0.6	1	0.6	0.62	1	0.62
Jasper	2.14	3	0.71	2.06	3	0.69	2.14	3	0.71
Newton	1.42	2	0.71	1.28	2	0.64	1.55	2	0.78
Rush	1.37	2	0.69	1.2	2	0.6	1.33	2	0.66
Switzerland	0.69	1	0.69	0.64	1	0.64	0.62	1	0.62
Carroll	1.31	2	0.65	1.26	2	0.63	1.21	2	0.6
Sullivan	1.94	3	0.65	1.77	3	0.59	2.16	3	0.72
Blackford	1.25	2	0.63	1.15	2	0.57	1.23	2	0.61
Jay	1.2	2	0.6	1.14	2	0.57	1.29	2	0.65
Brown	1.1	2	0.55	1.1	2	0.55	1.08	2	0.54
Warren	0.52	1	0.52	0.47	1	0.47	0.55	1	0.55
Tipton	0.73	1.5	0.49	0.73	1.5	0.49	0.78	1.5	0.52
Grand Total	501.9	397.22	1.26	480.1	393.63	1.22	477.68	401.81	1.19
* counties where courts are requesting an additional court or court officer									